

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
SECOND APPEAL NO. 91 OF 2007

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 29th March, 2007.

Heard Shri Jaipurkar, learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for possession and that the defendant had encroached on certain portion of plaintiff's land.

Both the Courts have concurrently held that the plaintiff had failed to prove that the defendant encroached upon the plaintiff's land.

The map drawn by the surveyor clearly showed that the surveyor had measured the land of the plaintiff and not measured the surrounding lands or the land belonging to the defendant to find out as to whether there is any encroachment or not. The Courts have further considered the evidence of the witnesses examined by the plaintiff and the defendant to record the aforesaid finding. There is no perversity in the findings recorded by both the Courts. The findings recorded by both the Courts are pure findings of facts based on proper appreciation of evidence on record. It was necessary for the plaintiff to clearly prove his case, specially when the case pertains to

encroachment.

The judgment relied on and reported in **2004(4) SCC 161** is not applicable to the facts of the case in hand as on the basis of the facts of the reported judgment, the Apex Court came to a conclusion that the findings recorded by the subordinate Courts were contrary to the facts of the case and perverse. Such is not the case here.

Since no substantial question of law arises in this Second Appeal, the same is dismissed with no order as to costs.

JUDGE

APTE